

REMARKS

Claim 7 has been amended to overcome the objective to informality.

Claims 7 and 14 are the remaining independent claims in the application and are both directed to the package of the (1) container and (2) the closure. Claims 7 and 14 have been amended to clearly set forth the feature that the locking lugs of the closure are positioned on an axis that extends perpendicularly from the diametrically opposed squeeze pads. Support for this amendment may be found in the specification on page 6, lines 27 – 31. Claims 2 – 6 have been amended to depend either directly or indirectly from claim 14.

The Examiner has rejected claims 3 and 14 as being unpatentable over Montgomery (US 4,213,534) in view of Kusz (US 5,687,863).

As set forth in the Declaration of Philip J. Robinson dated November 6, 2006, the Kusz patent is one which is owned by Owens Illinois Closure Inc., the owner of the present application serial no.: 10/731,972. Mr. Robinson has experience with the manufacture of closure formed according to the teachings of the Kusz patent.

A new Declaration of Mr. Robinson is forwarded herewith in which he explains the difficulties of manufacturing closures of the Kusz patent design on a commercial basis due to the length of the chordal lugs 70 and the location of the hinge areas.

The cordal lugs 70 of Kusz are hinged to the skirt along a vertical hinge area 72 and at its upper end on a horizontal hinge area 74 (see column 3, lines 9 – 12) and are not joined to such skirt along a path that extends perpendicularly to the squeeze pads 32.

It is noted in Mr. Robinson's Declaration, the location of the lug 70 of Kusz requires that the tab be formed significantly longer than the locking lugs of the present application with the result that it is difficult to completely fill the molding cavity of such lugs on a commercially consistent basis.

In the reference to Kusz, the lugs 70 are joined to the inner surface of the sidewall or skirt 28 of the closure at an area which is a substantial distance from the center line (line 11 – 11) perpendicular to the axis denoted by the line 10 – 10 (Fig. 9) which defines a plane extending between the fingers engaging portions 30.

As a result, of this positioning of the vertical hinge area 72 of the lugs 70, it is necessary to have a much larger space between the inner annular wall skirt 34 and the outer wall or skirt 28 than is required in the closure of the present invention in which the locking lugs 20 are joined to the outer sidewall 14 along a line which is substantially perpendicular to the line extending between the pair of pads 22. As a result of such positioning and the capability of providing the outer side wall 14 closer to the inner side wall 16, significantly less plastic material is required for the closure of the present invention as compared to the closure of the Kusz reference

thus giving a significant cost savings for the closure of the present invention over that of the closure set forth in the Kusz reference. In the Kusz reference, the positioning of the juncture between the vertical hinge area 72 forming the juncture of the lug 70 with the outer wall or skirt 28 coupled with the desirability of having the ends of the lugs located on or close to a plane (11-11 in Fig. 12) perpendicular to a plane (10-10 in Fig. 9) results in a lug 70 having a long extent from the hinge 72 to the end. In contrast the positioning of the locking lugs 20 of the present invention, with both (1) the free ends 20A and (2) the areas of juncture with the side walls being in the vicinity of the plane which is perpendicular to a plane extending between the opposing pads 22 provides a closure/container combination clearly distinguishable over Kusz alone or in combination with Montgomery or any other references of record. This is shown clearly in Fig. 12 and described in the Declaration of the inventor, Philip J. Robinson, submitted herewith.

To establish a *prima facie* case of obviousness, the Examiner must, *inter alia*, show "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." In re Thrift, 298 F.3d 1357, 1363, 63 USPQ2d 2002, 2006 (Fed.Cir. 2002). "When the references cited by the examiner fail to establish a *prima facie* case of obviousness, the rejection is

improper and will be overturned." In re Brouwer, 77 F3d 422, 425, 37 USPQ2d 1663, 1666 (Fed.Cir. 1996). It is respectfully submitted that no *prima facie* case of obviousness can be made with respect to claims 2 – 9, 11 and 14 based upon the combination of references cited, namely, Montgomery and Kusz.

In view of the foregoing, a reconsideration of the application and allowance of claims 2 – 9, 11 and 14 are respectfully solicited.

Respectfully submitted,

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